indemnification.

MR. LIEBELER: Starting with 311, near the bottom of 311 refers and the indemnity obligation in the side letter is qualified by 13.3G, that you should be entitled to indemnification subject to the limitations of 13.3G. That's in the side letter. So you have to go back to 13.3G in the asset purchase agreement which is Exhibit 312, page 74, middle of the page. And 13.3G says that there's not any obligation to indemnify if C&S in these circumstances takes any identifiable action which directly causes the excluded liabilities to be there.

So, to the extent that C&S takes an affirmative identifiable action, there's no indemnity. That, in fact, the side letter is perfectly consistent with the provisions, with any provision of the APA because it actually refers back to a limitation in the APA on the indemnity.

THE COURT: Tell me what that sentence means again.

MR. LIEBELER: Sure.

THE COURT: Sellers, the debtor, shall have no obligation to indemnify C&S arising out of excluded liabilities. We're assuming that --

MR. LIEBELER: Well, no, it's --

THE COURT: We're assuming that the Berry is an excluded liability.

MR. LIEBELER: That's correct. But there's some of the

language you missed, Your Honor, and that is that C&S takes any identifiable action.

THE COURT: That's after. I'm not there yet.

MR. LIEBELER: Okay.

THE COURT: Debtor shall have no obligation to indemnify C&S for any losses arising out of excluded liabilities to the extent C&S takes any identifiable action which directly causes the excluded liabilities to be a liability of C&S?

MR. LIEBELER: Correct. Now, the only inconsistency --

THE COURT: What does that mean? Does that mean that the debtor agreed to indemnify C&S for everything else?

MR. LIEBELER: Let me address your question in a slightly backwards way and bear with me for a moment. The only inconsistency that's been alleged between the side letter and the APA is that it goes to Section 12.4 of the APA. So let me ask you to turn to 12.4 because that's inconsistency that's been alleged. Okay. That -- the only argument that anyone has made on inconsistency between the side letter and the APA is that the side letter is inconsistent with 12.4A.

THE COURT: Which specifically says the debtor would have no obligation to indemnify the buyer from damages resulting from any activity post-closing.

MR. LIEBELER: Correct. And we --

THE COURT: Engaged in by C&S for infringement.

MR. LIEBELER: Correct. And we contend, Your Honor,

that any activity in 12.4 is --

THE COURT: Is not indemnified.

MR. LIEBELER: -- is for all purposes equivalent to the language in 13.3G which is a limitation on the side letter that says that there's no obligation to indemnify to the extent that C&S takes any identifiable action which causes the excluded liabilities to be a liability of the purchaser. We contend that that language is consistent, 12.4 is entirely consistent with the limitation in 3G.

THE COURT: So that 311 is also subject to 12.4.

MR. LIEBELER: 311, Your Honor?

THE COURT: Rule 311. Exhibit 311. The side letter.

MR. LIEBELER: Oh, yeah. I'm sorry, I thought you meant an asset purchase -- you mean Exhibit 311?

THE COURT: Yes.

MR. LIEBELER: Yeah. Because Exhibit 311 itself calls out that you go back to 13.3G. It says -- the language is dense, Your Honor, in part because this is drafted by corporate lawyers who don't litigate for a living and have to stand up in court and interpret exhibit -- interpret asset purchase agreements on the fly.

THE COURT: Right, exactly.

MR. LIEBELER: But the main concept here if you look at, I think it's 12.4A and B, are -- and the way we've conceived the asset purchase agreement from an operational perspective is

if C&S continues to do what was done up until the closing, then it's going to be the debtor's fault and the indemnity would run back to the debtor for that.

If on the other hand, after the closing, C&S did something that was a, you know, deliberate and willful infringement, if Mr. Dillon went back and broke into Mr. Berry's house and stole a piece of software from him and raced back to the server and put it on there and started using it, if that would be an action that took place after closing, then that would not be indemnifiable. That's how we've conceived these provisions to be together. And it's my understanding that that's how -- that's the whole point of the way the asset purchase agreement was put together. We don't think the side letter is in anyway inconsistent with that.

THE COURT: Well, the letter seems pretty broad and doesn't seem to end with closing. The indemnification for all past, present and future use of the Berry technology would be considered an excluded liability?

MR. LIEBELER: And then that is -- again, that sends us back to 13G which requires an identifiable action that says -- 13G says that we do not have an indemnity if C&S takes an identifiable action.

THE COURT: Tell me what an identifiable action is.

MR. LIEBELER: Some -- and action that we can identify, such as, for example, Mr. Dillon breaking into Mr. Berry's house,

taking his software and putting it back on the server. That would absolutely --

THE COURT: How about using the software that's on the server?

MR. LIEBELER: Don't know. But, to the extent -- that would also be any activities subsequent to the closing date. And so that provision would be consistent with 12.4. So 13.3 is consistent with 12.4 and the side letter expressly incorporates 13.3. The only inconsistency --

THE COURT: Wait a minute, this 13.3G only apply post-closing? Or pre-closing? Which are you saying is pre-closing and which is post-closing?

MR. LIEBELER: I don't think there's a time limitation in 13.3G.

THE COURT: But there is in 12.4. 12.4 is nothing post-closing.

MR. LIEBELER: Fair point, Your Honor, but I don't think there's been any allegation, at least for purposes of today's argument, that there was any activity prior to the closing that's in issue.

THE COURT: So it's all post-closing, so it's all covered by 12.4. So there's no indemnity.

MR. LIEBELER: I don't know whether there is an indemnity or not. I don't think we've reached that position. That's an argument that would -- that may come up between C&S and

the debtor at some point in time. But we're not right to discuss that issue today. There's no reason to adjudicate that issue. It's not right. Noone's argued that there is or isn't an effective indemnity.

THE COURT: Well -- sure there is. Part of the non-feasibility is that we have a gazillion dollar claim against C&S. And the debtors indemnified them. So even though my administrative claim against the debtor may be limited to -- estimated to be $100,000 --

MR. LIEBELER: The way I read --

THE COURT: -- there's a post-petition claim

MR. LIEBELER: Mr. Sprayregen tells me that he is prepared to address that issue. If I may yield to him, Your Honor?

THE COURT: You may.

MR. LIEBELER: Thank you.

MR. SPRAYREGEN: Your Honor, I was actually going to truncate my feasibility discussion in view of your $100,000 ruling. However, in view of this question, I'll go through what I was going to go through.

But before I get there, I will say what you're hearing with respect to that side letter, somebody may argue that it's inconsistent. The debtor's clear view is that it isn't. It could be that somebody argues someday that it is. Again, if we're going to good faith for a confirmation standard, there's no

evidence that the debtor, in responding to a suit against C&S prior to the closing, in order to get the deal closed, doing something that they thought was consistent with the asset purchase agreement, even if they ended up doing something inadvertently inconsistent and we have to deal with that someday, means that this plan is not proposed in good faith or means that it's proposed by some means forbidden by law.

We don't think any of that happened, but I just wanted to point that out because the debtor believed it was complying with the Court's order concerning the sale and concerning the asset purchase agreement.

Now, I will say with respect to feasibility, Your Honor, we cited in our confirmation brief the standards for feasibility. And I think it's important because we talk about that the -- and we cited the cases, so I won't go through all the names of them -- but it's a preponderance of the evidence standard. Clear and convincing evidence has been rejected as the standard. The standard is that there's a reasonable probability of success. Cases are legion where they make statements --

THE COURT: I don't need the law.

MR. SPRAYREGEN: Okay.

THE COURT: Just tell -- deal with the facts as alleged.

MR. SPRAYREGEN: Okay. Okay. First of all, Your Honor, the -- this claim where there's the --

THE COURT: I think it's back there.

MR. SPRAYREGEN: This one, Danny. With respect to the claim actually you just estimated at $100,000, the trial on that one is set for September 20, '05. And obviously that's a long way out and I don't know what's going to happen with respect to that. But timing could be a significant issue.

With respect to what the Court stated about this C&S indemnity, obviously, before we ever get there, you need a judgment, it needs to apply and recall that Mr. Scott's testimony was that the indemnity was actually funded by an indemnity escrow of $10 million that's already sitting there.

The -- we're also presuming, if it ever happened and the Court pointed out an argument that I was going to make, that C&S is not objecting to feasibility. And they potentially someday may have a claim against the debtors, but I think it speaks volumes that they're not here objecting to feasibility. And that actually makes a lot of sense, even to the extent we jump through those three hoops and they ultimately have an indemnity claim, or believe they have an indemnity claim to assert against the debtors, it presumes that that's somehow not resolved either procedurally or substantively, that that creates a problem for the debtor being able to pay it, that the C&S doesn't agree to even if it's a large number, take the payment over time. There's all sorts of potential resolutions of that.

And I had Exhibit 189 put back on the board over here

because I think it's quite important. This is one of the debtors that's exiting with a capital structure and with the two trust structures, as Mr. Stenger testified, with a very strong capital structure to the debtor itself, Core-Mark, and these two trusts. And I think again, the Stenger, Scott and Folse affidavits, again, there's no dispute as to the estimates of the assets and liabilities say for the Berry claim and say for, let's say this C&S potential indemnity, for now --

THE COURT: Well, except that the testimony was that these were book value. What does that have to do with market value?

MR. SPRAYREGEN: Your Honor, Mr. Stenger testified as to the book value, the assets and liabilities.

THE COURT: Yeah.

MR. SPRAYREGEN: Well, there was further testimony, let's go through it because I noted that. Book value was a common way of looking at a balance sheet of a company. We have to look at it in some way. There is a valuation in the plan of reorganization. And in fact, we get to the valuation through the assets and liabilities of about $150 million in equity value. Again, that's --

THE COURT: Where is that?

MR. SPRAYREGEN: Well, that's partly the result of this -- subtracting the liabilities from the assets.

THE COURT: Yes, and he testified those were book

values, not fair market values.

MR. SPRAYREGEN: Okay. In the plan -- excuse me, in the disclosure statement itself, there's a black stone valuation of --

THE COURT: How does it --

MR. SPRAYREGEN: I believe approximately --

THE COURT: -- value Core-Mark?

MR. SPRAYREGEN: -- 300 million. I'll check that.

THE COURT: 300?

MR. SPRAYREGEN: 290 million, Your Honor. And if necessary, we can put on more of that. That --

THE COURT: And the liabilities are 320?

MR. SPRAYREGEN: No, no, no. This would be 290 net of the liabilities.

THE COURT: Where is it?

MR. SPRAYREGEN: In the disclosure statement.

THE COURT: Where?

MR. SPRAYREGEN: Let me get the cite. We're pulling out the citation in the disclosure statement. Just to clarify while they're finding that, it actually is consistent with this number in the sense that it's about 155 million of equity value. But Mr. Huffer was correcting for me, it's 290 million of total equity value. Let me go through the other numbers while we get the citation to the valuation because I think it's important.

Again, we cite that the reclamation trust is over-

funded by approximately 20 million. And the affidavits say that by the time it runs down, it will be over-funded by approximately 12 million. The PCT is over-funded by approximately $30 million.

THE COURT: Based on an estimate that you can reduce the current administrative claims of now 500 million to 144 million.

MR. SPRAYREGEN: That is correct, Your Honor. And that --

THE COURT: Isn't that a big leap of faith?

MR. SPRAYREGEN: Absolutely not, Your Honor. And again, that's why we went to the trouble of the extensive affidavits we provided from Mr. Folse, Mr. Scott and Mr. Stenger. And we went through in detail as to the categories of claims that get us from the number of the asserted claims to the number of the estimated claims. It's not the least bit unusual, Your Honor, and I know you've seen it in many cases to have claims in cases that asserted wildly higher amounts than their estimate, then their actual amounts they turn out to be. And part of our job, obviously, has been to determine in good faith some estimate for that with some room to miss.

THE COURT: But there is a difference.

MR. SPRAYREGEN: Between --

THE COURT: In the other cases, the estimates we're talking about are general unsecured claims. And I'm not being called on to make a determination, which I am today required to

make a determination that these estates can pay 100 percent of the administrative claims, or the plan cannot be confirmed.

MR. SPRAYREGEN: I guess I would beg to differ, Your Honor. In every case we need to demonstrate that we can satisfy the confirmation standard concerning payment of administrative expenses. And in most --

THE COURT: And I don't have cases where you're asking me to make a leap of faith that administrative expenses are 144 million against 2.1 billion and filed.

MR. SPRAYREGEN: Your Honor --

THE COURT: Now, I accept that they've been reduced now to approximately $500 million given the estimation I just made. But --

THE COURT: Well, Your Honor, I think that's quite indicative of how far they've come down and what we think is left. But Your Honor, what we did in this case, actually, to be even safer than in most cases, the reason you don't usually have that is cause it's not all that common to have administrative expenses bar date prior to confirmation hearing. And so you don't actually -- all you have is the debtor's estimate. You don't have the other side's assertion.

THE COURT: No, I also have the debtor's statement that they have paid administrative expenses as they come due during the case. And that the balance of the accounts payable is X dollars.

MR. SPRAYREGEN: That --

THE COURT: And that it can be paid in the ordinary course of business out of cash flow as we have in the last three years. This is a different case.

MR. SPRAYREGEN: It's different in the sense that, and let's be clear, we actually believe all of the claims that have arisen in the ordinary course of business from the filing of the case actually have been paid. This is not some case where we held payments on a whole bunch of ordinary course due administrative expense claims because the estate didn't have the money. And now we're faced with on exit with a mountain.

That's not this case at all. We've been paying all of Core-Mark's ordinary course expenses. In fact, we had -- again, the best evidence of that was a couple of the objections where Core-Mark's creditors whose administrative expenses hadn't been paid. We went and looked at those, found out there was some snafu with a couple of them and got them paid. But in the main, the ongoing business is paying all of its administrative expenses as they come due.

The target of administrative expenses that we have here are really a function of the fact that we took a $17 billion business, sold off a huge piece of it in the middle of the case and are left with a business the third of its size and we have that two-thirds out there that in essence some sort of termination liability, lots of disputes about that.

THE COURT: It is now the obligation of the remaining third.

MR. SPRAYREGEN: Correct.

THE COURT: And I have to determine that it can pay all of those expenses in full.

MR. SPRAYREGEN: Absolutely. And that's what I was starting to walk through and I'm happy to go through it in any level of detail the Court desires because we spent a lot of time on this and we feel very comfortable that this plan is a feasible plan and that we can cover all of those expenses in full.

Let me go through the numbers, then I'll come back to the valuation because I think the valuation is important. As I noted, Your Honor, the -- we have what we regard as excess value in both the RCT and the PCT equivalent to about $60 million. Again, that's not for sure, but those are our projections. We'll see how they end up.

We also heard Mr. Stenger's testimony that, you know, in the four years from '04 to '08, Core-Mark was going to produce cash flow of about $107 million. That's not cash that's called on for these administrative expenses. In fact, 43 million of it is supposed to go to CAPEX and 64 million to pay down debt. And Mr. Stenger testified that it, if necessary, it didn't need to be used for that, obviously, not every penny, but some percentage of that could be available to satisfied a, he called it a miss on administrative expense claims.

Mr. Stenger also testified that we have a $50 million credit line. Now, again, we're not going to use every penny of that to fund administrative expenses, but that's another, what I'll call a backup liquidity protector to the extent these administrative claims end up being larger than we thing. Again, we don't think that's going to occur, but we're not saying we just make it by $1. We're saying we make it by a lot.

I also note, and this is where we get into the valuation which is at page 101 of the disclosure state. Mr. Liebeler has the disclosure statement, I can hand it up.

THE COURT: Why don't you hand it up.

MR. SPRAYREGEN: Okay. May I approach?

THE COURT: Unless you can tell me what exhibit it is.

(Pause)

THE COURT: Well, since I don't have witnesses and really evidences it, who prepared the --

MR. SPRAYREGEN: Your Honor, we have Mr. Huffard here and we're happy to put him on. The valuation wasn't actually raised by any party, so we didn't put him on, but we had him here just in case there was an issue concerning that and we're happy to do it.

The other thing I was going to suggest, if it would be helpful, part of the function of actually having agreed, and we appreciate Mr. Hogan's agreement, but agreed on putting on -- or putting in the affidavits was we actually didn't hear some of the

explanation of why we think it's imminently reasonable, the estimates we came to. We don't think we've been aggressive, we think we've been very conservative. And I could, if the Court would permit, Anne Huber who was going to put on Mr. Folse, could just walk you through in less than five minutes how the claims get from that number to --

THE COURT: I read the declaration.

MR. SPRAYREGEN: Okay.

THE COURT: But I think you do need to proffer some testimony in support of an enterprise value of Core-Mark. And I don't know whether your witness would be prepared to say that all of the analyses that are contained in pages 101 through 105, I think, of the disclosure statement are true today.

MR. SPRAYREGEN: If I could take one moment, I think we can address that momentarily.

(Pause)

MR. SPRAYREGEN: Your Honor, the witness is prepared to say that, but we have a very short direct from him and we can just put it on.

THE COURT: All right.

MR. SPRAYREGEN: Thank you.

THE CLERK: (Away from mike)

THE WITNESS: My name is Paul Huffard. My last name is spelled H-U-F-F-A-R-D.

PAUL HUFFARD, DEBTOR'S WITNESS, SWORN

MR. BLEDSOE: Steve Bledsoe for Kirkland & Ellis LLP, Your Honor.

BY MR. BLEDSOE

Q Mr. Huffard, I know you've testified before in this court, but can you very briefly tell us your educational background?

A Sure. I have an undergraduate degree in economics from Harvard College and I have a graduate degree in business from North Western University.

Q And what year did you graduate with your MBA from North Western?

A 1992.

Q Can you tell us your work history since that time?

A Since that time, I have worked in --

THE COURT: I don't think we need that.

Q Mr. Huffard, what --

THE COURT: Thank you.

MR. BLEDSOE: Your Honor, if you want --

THE COURT: We can incorporate his prior testimony on his qualifications.

Q Have you any experience determining the value of businesses?

A Yes, I have.

Q What experience have you had valuing businesses?

A Valuing businesses is the mainstay of the work that I do day in and day out at the Blackstone Group where we provide financial advisory services to companies and creditor groups in situations

involving financial restructurings.

Q Have you been certified as a valuation expert in other bankruptcy cases?

A Yes, I have.

Q What cases are those?

A In Levitz Furniture and Loeman's, Inc. (phonetic).

Q Have you had the opportunity to analyze the reorganized enterprise value of Core-Mark Newco?

A Yes. We were asked by the debtors to provide a valuation in connection with this confirmation hearing and the disclosure statement. So we did do that.

Q Just so we know exactly what you're talking about, what is Core-Mark Newco comprised of?

A Core-Mark Newco is comprised of the convenience store distribution business of Fleming Companies.

Q Now, I'm going to walk through your methodologies in a moment, but, first I want to have a look at what the value you've reached is. Have you reached any conclusions about what the reorganized enterprise value of Core-Mark Newco is?

A Yes, we have.

Q Okay. What is the enterprise value of Core-Mark Newco?

A We have established a range of values from 265 million to 315 million with a mid-point value of 290 million as -- all of those numbers are for enterprise value.

Q Okay. What valuation methodologies did you use to arrive at

that range?
A We used a number of commonly accepted valuation methodologies including comparable transaction multiples methodology as well as a discounted cash flow approach.
Q Okay. On the comparable multiples, is that where you've referred to in your affidavit as the precedent transaction analysis?
A That is correct.
Q You mentioned that those were commonly accepted methodologies. Are there any other valuation methodologies which you considered, but did not use?
A Another valuation approach which is commonly used is a public company trading multiples approach. We did consider that and determined that it was not applicable to this situation.
Q Now, why did you determine that that third valuation methodology was not applicable in this matter?
A In order to apply that method, you need to be able to identify a universe of publicly traded companies that are in comparable lines of business. In the instance of Core-Mark Newco, there are no publically traded convenience store distribution businesses. The other closest companies, whether they be just wholesale distribution businesses or other sorts of distribution businesses, our view was not sufficiently comparable to provide meaningful data.
Q Okay. Now, I want to go back and talk about the two

methodologies that you did use. First, let's talk about the precedent transaction analysis. Can you explain how that works generally?

A Yes. In that approach, you identify a number of acquisition transactions that are of businesses in similar lines of business. You examine the value that was paid for those businesses and compare that to various financial measures. Typically, you would compare that to either revenue or EBITDA or some other measure of profitability.

Q Okay. Can you tell us how you applied the precedent transaction analysis to your valuation of Core-Mark Newco in this matter?

A Yes. We developed a list of comparable transactions. These were acquisitions of other convenience store distribution businesses. We examined the ratios that I've described for those different transactions. We've evaluated which of those transactions were most similar and relevant to Core-Mark Newco and based on examining those, we came up with a range of valuation multiples based both on revenue as well as EBITDA that we thought were appropriate in this case.

Q Now, what is a valuation multiple?

A It is, as I mentioned earlier, comparing the transaction value, which would be the numerator, to a specific financial performance measure, whether it be EBITDA or revenue, that would be the denominator. And the ratio of that numerator and

denominator is the so-called multiple.

Q What financial data from Core-Mark Newco did you use in your analysis?

A We used a combination of both historical actual financial data as well as projected financial data, the projections that were prepared by Core-Mark management with the assistance of the Alex Partners team.

Q And what basis do you have to believe that those numbers are valid and provide a valid basis for your analysis?

A Well, we have reviewed those numbers in detail ourselves. And I think it's fair to say that Core-Mark's actual performance, as you look back over the recent past, has been entirely consistent, slightly above the projected performance in those periods. So that gives us a degree of confidence that the projections are reasonable.

Q Okay. I want to talk now about the second methodology, the discounted cash flow analysis. How does that work?

A That approach examines Core-Mark's -- a company's, let me talk about it more generally, a company's projected cash flows over a projection period, typically a four or five-year period is used. And a -- what's called a weighted average cost of capital or a discount rate is used to discount those projected cash flows back into the present. We also look at the estimated value of the company at the end of that forecast period which is called the terminal value and you similarly discount that terminal value

back to the present. The sum of the interim cash flow's the present value of the interim cash flows along with the present value of the terminal value is the total enterprise value of the business.

Q Now, you've talked about how the methodology works generally, at least the discounted cash flow methodology. Can you describe how you applied that methodology to Core-Mark Newco in this matter?

A Sure. We also used in this approach the projections that management and Alex Partners had prepared. We calculated the series of cash flows on an annual basis for the periods from the remainder of 2004 and then from 2005 through 2008. We discounted those back to the present at a discount rate. We calculated a weighted average cost of capital in a range of 15 to 20 percent. And we used that to discount the cash flows back to the present. We also then calculated as I mentioned earlier a terminal value based on using the 2008 EBITDA and we used the EBITDA multiple approach to establish the terminal value in 2008.

Q Was the value you arrived at, your discounted cash analysis, consistent with the value you arrived at in your precedent transaction analysis?

A They were generally consistent. It's rare that you get two valuation methodologies give you the exact same numbers, but they were generally consistent and they were as consistent as you would normally expect these two approaches to be.

Q I just want to wrap up. You testified that according to your valuation, the low range was 265, the high range was 315 and the mid-range was $290 million, is that correct?

A That is correct.

Q Do you consider your -- that valuation to be aggressive?

A No, I do not.

MR. BLEDSOE: Nothing further, Your Honor.

THE CLERK: Excuse me, Your Honor, could counsel restate his name for the record?

MR. BLEDSOE: Steven Bledsoe of Kirkland Ellis LLP.

Q And is your valuation consistent with what the company is worth today, or at the end of what we expect to be the confirmation in August?

A The valuation date was as of July 31st of 2004.

Q Thank you.

MR. BLEDSOE: Nothing further, Your Honor.

THE COURT: All right. Anybody wish to cross-examine the witness? All right. Thank you. Thank you. You may step down.

(Witness excused)

MR. SPRAYREGEN: Your Honor, I -- we do think, reflecting on the Court's questions, that it may be useful to take five or ten minutes to just put Mr. Folse on to elaborate a little bit on his affidavit if the Court believes it's necessary.

THE COURT: Well, does he have anything to add to the

affidavit?

MR. SPRAYREGEN: I don't think it's additive. It's more explanatory of the affidavit. So --

THE COURT: I'll hear five minutes of him.

MR. SPRAYREGEN: Okay. Thank you.

THE CLERK: Please remain standing.

THE CLERK: Place your hand on the Bible. Please state your full name and spell your last name for the Court.

THE WITNESS: Barry J. Folse, F-O-L-S-E.

BARRY J. FOLSE, DEBTOR'S WITNESS, SWORN

MS. HUBER: Good afternoon, Your Honor. Anne Huber appearing on behalf of the debtors. I have been involved in the claims processing and that's why counsel has asked me to address this particular question. I'm going to be addressing Exhibits 8 and 9 which have previously been admitted, if I could just hand up larger copies for Your Honor and the witness.

THE COURT: All right.

DIRECT EXAMINATION

BY MS. HUBER:

Q Mr. Folse, could you please state your name for the record?
A Barry J. Folse.
Q And what is your role in these cases?
A I have headed up the claims resolution team at Fleming.
Q And you are an employee of AP Services which is an affiliate of Alex Partners, is that correct?

A Yes.

Q Now, Mr. Folse, did you sign a declaration in connection with this confirmation hearing?

A Yes, I did.

Q And that document has been admitted into evidence. I have two documents in front of you. They're marked as trial Exhibits 8 and 9. Do they look familiar to you?

A Yes. They are Exhibit 1 and 2 to my declaration.

Q Your declaration refers to SAP claims. Can you define that term for the Court?

A Secured Admin and Priority claims. Those are filed proof of claims that were filed in the bankruptcy.

Q And do you have an opinion as to the amount of SAP claims that will ultimately be allowed in these cases?

A Yes. The estimate as of July 16th, when I filed my declaration, is the 139.5 listed in the fourth column on Exhibit 1.

Q When you say Exhibit 1, do you mean trial Exhibit 9?

A I'm sorry, Exhibit 1 to my declaration.

MS. HUBER: Excuse me, trial Exhibit 8, Your Honor.

A Yes.

Q I would like you to focus a moment on trial Exhibit 9 which is Exhibit 2 to your declaration. Do you have that in front of you, Mr. Folse?

A I do.

Q Can you explain to the Court the significance of the far right-hand column of Exhibit 2 to your declaration, also known as trial Exhibit 9?
A Yes. The far right-hand column are the totals -- if you look in the first row of the far right-hand column, you'll see the first number, the 2.1 billion, is the total asserted SAP amounts filed in the case. And the bottom, the 31.9, is my current estimate of the filed SAP components.
Q And to get to that number, Mr. Folse, have you been working with the claims team provided by AP services?
A Yes. We have about -- we have 10 Alex Partners personnel that head up various claims resolution teams that have looked at all 7400 of the filed SAP claims.
Q And have you been working with employees of the debtors as well?
A Yes. Just about everybody that's remaining with the wholesale operation of the debtors have in one way or the other for the last six months been involved in the claims resolution process. That probably represents over 200 different individuals.
Q And you have a ballpark estimate of the numbers of hours that both the claims team as well as the debtors employees have been presiding on this process?
A Thousands, thousands.
Q And have the claims team members reviewed each and every of

those 7400 claims?
A Yes. Of the filed SAP claims.
Q All right. Then returning to Exhibit 2 to your declaration marked as trial Exhibit 9, we started with 2.1 billion, I believe you testified.
A That's correct.
Q And of that amount, how many have been withdrawn?
A How many claims?
Q The aggregate amount of the claims, excuse me?
A 500 -- $1.58 billion have been -- I'm sorry, withdrawn?
Q Correct.
THE COURT: We don't need to go through every line item.
MS. HUBER: Very well, then.
THE COURT: Just elaborate on -- I've read the affidavit. I've read the exhibits.
MS. HUBER: Okay. We'll move then, Your Honor, to the $556 million figure.
Q The question I think we're all trying to get an answer to is how can we possibly go from 556 million down to 31 million. So we need your help, Mr. Folse, in explaining how we can come down from there.
A Sure.
Q Starting with the 556, it appears that you're averring that there will be a reduction of 173 million. Why do you think

that's going to happen?

A The 173 not transferred to the PCT all relates to claims of reclamation claimants that through the plan of reorganization will get handled by the RCT and as not a liability of the PCT.

Q Are the claims that issued there, are those reclamation claims?

A They're reclamation claims and any other SAP claims filed by reclamation claimants that per the plan are the liability of the RCT.

Q The next number is 37.4 million. And that appears to relate to satisfy by escrow funds. What do you mean by that?

A That is namely the PACA escrow and the FSA reserve escrow. And in my opinion, there are adequate funds in both of those escrows to pay any remaining claimants against those two escrows.

Q Is the claims resolution team working on actually reducing both of those reserves?

A Yes.

Q I believe you were in the courtroom earlier when there was agenda Item 10 discussed before the Court. It was addressed by a gentleman on the phone. And can you just provide some context as for that settlement and how that's going to reduce that FSA reserve?

A I believe you're talking about the affiliated settlement?

Q That is correct.

A Once that settlement goes to closing, that will give us

approximately five and a half million dollars, I believe, out of the FSA reserve.

Q Moving then to the next item on Exhibit 2 to your declaration, also identified as trial Exhibit 9, there's a number of 170 million there.

A Right. Those are claims that based on the books and records of the debtors, the debtors either feel -- believed that we have no liability for that claim in the entirety. Or we believe that the SAP liability is significantly less and this 170 shows that reduction.

Q Does the $170 million figure also include the Wayne Berry claim that the Judge has already indicated is estimated at 100,000?

A Yes. If you'll look under the estimated books and records under the column entitled other administrative claims, there's an $81.4 million number. Of that $81.4 million reduction, 47.5 relates to the Wayne Berry reduction because we had it estimated at a $500,000 claim.

Q And the remainder of the $170 million that is summarized here on the exhibit, is that premised on a claim-by-claim review?

A Yes. It's -- again, each of these 10 claims resolution teams have reviewed each and every claim. They reviewed the actual proof of claim. They reviewed the debtor's books and records. And for various reasons, we have not objected to these claims. The biggest reason is that a lot of these claims contain

an unsecured component. And at this time, we're not ready to object to that piece of the claim. And per the local rules, we need to bring all of those objections at one time.

Q The next figure on Exhibit 2 is $60.8 million approximately. Do you see that, Mr. Folse?

A I do.

Q And does that $60.8 million figure include claims that have been asserted by surety bonds, assert priority status that would otherwise apply to taxing authorities?

A Yes. I mean, that category in general is where we don't believe that the creditors have any secured admin or priority components of their claim. There may be an unsecured component to that claim. The biggest piece of that is with the 37.6 you see under the priority and property tax component that was asserted by surety bonds.

Q So, the claims team has taken into consideration Section 507(d) of the Code which prohibits subrogation of the taxing authorities priority?

A That's correct.

Q Let's skip the next number and move down to the $56 million figure. Can you explain to the Court what that reduction relates to?

A Yes. That reduction relates to claims -- this is the face value of the claims that will be settled by cash payments prior to the effective date. And those cash payments have all be in